How to Examine a Title to Real Estate

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HOW TO EXAMINE A TITLE TO REAL ESTATE

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INTRODUCTION

It is impossible in this monograph to attempt even to hint at the many rules of substantive law that govern and affect the title to real estate. We will assume, therefore, that the title examiner has a fair knowledge of these rules of law, and will confine ourselves to other questions which may well affect the title. It should be remembered in the first place that a record title is not a fetish of itself; that there may be a great difference between good title to real estate and record title; that many persons hold land who have not a good record title, while many titles good on their face are defective for one cause or another which does not and cannot appear on the records. For this reason all good conveyancers attempt as far as possible to get the history of the title, as their report might properly be biased by the consideration that the property had been for a long period of years in the hands of well-known people, or that it was based on a land development which had been engineered by careful and conservative owners. For the same reason it is always wise before reporting on a title to

personally examine the land in question, as many things may thus be called to the attention of the title examiner which he otherwise might overlook. He might notice, for example, that the fences were down; that the buildings were within some building restriction, or that the land was vacant where the parties expected to find buildings. It has happened, for example, more than once that good conveyancers have passed title by mistake to the wrong lot of land or have certified a title to be good which was impaired by some cause which was readily apparent on personal examination of the property. As we shall see in the course of this treatise, the examiner must rely of necessity on the common honesty of the average dealer in real estate. He knows and relies upon the fact that not one in a thousand real estate transactions are fraudulent. This reliance on common honesty is one basis of a record title, as of course it is comparatively easy to put on record deeds that are forged or to misstate important facts like the names of heirs interested in the property of a deceased person.

The title examiner is employed by the buyer and paid by him and it is his duty to protect the buyer at all hazards against anything which might diminish the value of the property bought. In case of mortgages, the mortgagee who loans the money selects the title examiner, whose duty then of course is to protect the mortgaee, but the examiner is paid by the mortgagor. In practice it is quite common for the parties to agree beforehand as to the amount of compensation of the examiner and this is wise to avoid

controversy as to his bill. It is quite customary for conveyancers to employ clerks experienced in such work to examine the indexes and make the abstracts and fill in the blanks by abstracting the various deeds, but when this is done, the examiner should himself verify the work of his assistants by an examination of the original record.

DESCRIPTION AND PLAN OF PROPERTY

The first thing the examiner will ask for on being retained to examine a title is the last deed of the property. Failing this, he will ascertain the exact location and get the name of the present owner. When this is done, he should carefully write out the description of the land to be conveyed, which land is commonly called the "locus," as in case the land has been previously subdivided, or is part of a larger tract, such a description is absolutely essential to have with him at all times. He should also as soon as possible make a sketch of the property, showing the points of the compass, the boundaries with the distances on each side, and all the adjoining owners. He will get this possibly from some atlas, where the land has been cut up in lots for some time, but preferably from the last available plan on file showing the description of the property. It is as a general rule convenient and sometimes absolutely necessary to make tracings or sketches of every plan on record which is referred to in any of the deeds or other papers abstracted. Such plans often explain descriptions in old deeds which otherwise would be unintelligible and form a very convenient way of piecing the property together when

it has been held in the past by separate and distinct owners.

Plans of all kinds are of great assistance to the examiner and should be carefully studied, and these are especially valuable in interpreting old deeds, as formerly plans were so expensive that they were not usually drawn except by the more wealthy people, and they are therefore of great help when found. For want of better information, the examiner will often find atlases of various dates which he can usually obtain at the registries, to be of great assistance, as these atlases will give the approximate outline of each lot of land, with the name of the owner. Such an atlas, for example, might help him materially in case of a break in the title in finding the name of the owner at a given date. Town maps are often made and are on file, containing much valuable information. Small maps are often bound in the record books themselves with the deeds and should be carefully studied. It is common to bind up the larger plans in books and compile indexes to these plans either under the name of the city or town in which the land is situated, under the name of the owner, and sometimes under the name of the street or of the surveyor who drew the plan. In this way it is possible to find plans which might not otherwise come to light. Plans of railroad locations are commonly filed in the registry of deeds, although they may be filed with some other public officer, as with the County Commissioner. Tax Collectors' plans are usually on file with the local assessors and should be consulted, especially in consideration of tax deeds.

RECORDS AND INDEXES

Let us suppose that the examiner has obtained the last deed of the property with general instructions in regard to it. He will first ascertain in which county his land lies and familiarize himself with county lines during the time of his examination, as it may well be that the lines have been changed, so that he must look for part of his title in one county and for part in another county. He will go to the Registry of Deeds of the county where the land lies and there trace back to a starting point for his title. He will find in the registries in this country universally that the deeds and most other instruments relating to titles are copied into record books in the registries of deeds. In some registries where the ink in the original records has become too faint for ordinary use, or where the records themselves have been lost or destroyed, duplicate records attested by the Register may be found and used.

In order to make these voluminous records available, indexes have been prepared containing the names of all persons named in these instruments. The grantees in all deeds and other instruments are placed in grantees' indexes and the grantors in grantors' indexes. It is a common practice to have a separate index for each year and from time to time these indexes are consolidated so that the examiner may be able to find in one index all the conveyances which John Smith, for example, has made or has received during five, ten or even a hundred years. Such consolidated indexes of course greatly facilitate the work

of the examiner and may be relied upon by him. The examiner should familiarize himself with the methods of indexing in these indexes in the particular registry in which he is to work. It is common, for example, to index partition proceedings in both grantor and grantee indexes. The names of corporations are treated in various ways. In some places the first word in the name, whatever it may be, is indexed, while in other places the most important name alone will be found. For example, the M. B. Smith Company might be indexed under M or under Smith; or in some places all corporations are indexed under the word "Company," all votes under the word "Vote" and all banks under the word "Bank."

The examiner should also be very careful in regard to the middle names, as the early indexes pay sometimes little attention to them and there is much law to the effect that the middle name of a person is not important, so that the title may really be charged with a conveyance or lien against John J. Smith when the conveyance or lien stands in the name of John Smith. Middle names were formerly not considered important and it was quite customary for persons to change their middle names as they saw fit, sometimes using them and sometimes not using them. To-day it is quite common for women when they marry to drop out their former middle name and use instead their former surname, and the examiner must be on the watch for all these things.

It is customary to keep separate indexes of attachments and of plans and in some places of tax sales and street and other assessments and the examine.

must ascertain just what system is used in the particular registry which he is using. The later indexes in most places now require the insertion of the name of the town where the land lies and this of course is a great help. Even here, however, the examiner must familiarize himself with the history of the locality and ascertain whether or not the city or town where the land lies was formerly a part of another city or town or went by some other than its present name.

PROBATE RECORDS

When a land owner dies, his estate is settled in the Probate Court and the examiner will be obliged to go to the probate records to find the names of heirs and other data necessary for his examination. Difficulties owing to the death of the previous owners are frequently encountered in tracing a title back to the starting point, as of course any change of title due to death will not appear in the grantee indexes in the Registry of Deeds. The fact of death of the former owner should appear where the deeds have been carefully drawn, by reference in the deeds of the heirs to the person from whom they obtained title. Where no such references appear and the deceased person was of a different name from the heir, as in case of a descent to collateral relatives or a devise to one of a different name, it may become quite difficult to ascertain from whom the title comes. There is a case on record, for example, where the last known deed was in 1892, made by one of several heirs of a person who died in 1785, and where there were no references or deeds on record during all that period.

In such a case old atlases or town or city plans or assessors' records can be resorted to and will usually disclose the name of the former owner. Then the examiner should go into the Probate Registry and there make a careful abstract of all papers on file in that estate. As a matter of caution the docket should also be examined and copied, as some papers may have been filed and lost or be out of place. Of course the important things to note in relation to a probate are all matters giving the court authority to deal with the title to the real estate. It should first be noted that the court had jurisdiction over the estate; that the deceased person died an inhabitant of the county which issued probate and the petition for probate should be abstracted to see what heirs of the deceased person are named in the petition and that the usual jurisdictional facts appear. Where there is a will, the will should be abstracted and any special clause like a devise or a power of sale relating to the real estate should be carefully copied. The inventory filed by the executor or administrator should also be examined, as it may be important to show that in his opinion the deceased person owned the property and also what it was worth at the time of his death. The proceedings of the court must be carefully examined. It should be seen that the heirs or other parties interested had notice of the proceedings for probate and whether they appeared or not, and that if the petition was without sureties, that publication was made in states which require publication. After appointment the affidavit or other proceedings showing notice of the appointment must be examined

and the examiner must satisfy himself that all proper proceedings were taken to bar the rights of creditors. He should also examine the accounts of the executor or administrator to ascertain whether any legacies provided in the will were paid, as in many states legatees have a lien on the land and can bring suit even a long time after probate. Probate proceedings must all be considered in view of the law in force at the date of the death, with which the examiner must familiarize himself, remembering that the main questions are, whether the Probate Court obtained jurisdiction and had power to take what action it did over the land and over the persons who had rights in the land.

The persons to be scheduled after a probate proceeding will depend upon the form of the probate, as in case of an administration the heirs must be run and likewise the administrator, if he obtains authority to sell for any purpose. If there is a will, the devisees of the land should be scheduled and also trustees, if the property is left in trust, and in all cases the estate of the deceased person himself should be scheduled because of the different methods of indexing adopted in different places.

SCHEDULES

A schedule is a copy from the index in the Registry of Deeds of all the deeds made by a certain person during a certain time in the case of a grantor index, or those made to a person in a certain period in the case of the grantee index. The purpose of grantee schedules is to find a starting point for the title, while

the grantor schedules have to be made and then checked from the time each owner received title until he parted with it and for a certain time afterwards sufficient to guard against tax sales. Schedules are commonly written on separate sheets of paper and will show simply the number of the volume of the record book and its page and the date of the conveyance and a statement of the property conveyed when necessary. It is customary in a grantor's schedule to insert the names of the grantees. The only purpose of the schedule is as a check to enable the examiner to assure himself that he has examined every instrument that can possibly bear on the title.

Where the examiner finds that the owner is a woman who has been subsequently married, both the single name and her married name should be scheduled, as she may have given a deed before her marriage which is not recorded until after it. Under the law in some states where the husband is made a joint owner with the wife of her real estate, it is necessary also to schedule the name of the husband as well as that of the wife where title is in her primarily. It may be necessary to schedule the name of the mortgagee under a mortgage to find out whether a discharge was ever given where it does not appear by a marginal reference on the mortgage.

ABSTRACTS

It is necessary to make an abstract or synopsis of every instrument relating to the property. The form of the abstract is important. It serves two purposes. In the first place, it forms the basis for the examiner's

study when he finishes collecting his material to ascertain by an examination of the abstract whether the title is good or not. In the second place, it forms a permanent and convenient record in case the examiner may later be consulted in regard to the title. For these reasons the abstract should be as full as may be necessary. The most approved system is to use printed blanks with a separate sheet for each instrument, which amounts to a synopsis.

Printed forms of abstract required in the Land Court in Massachusetts, for example, are as follows:

DEED — BOOK PAGE

Grantor .....
Consideration, $.....paid by.....Date inst....
Grantee .....Date ack....
Habendum to.....Date rec....
Covenants .....
Dower and .....
Signed by .....
Sealed by .....
Ack. by .....before.....

Description

Sheet No.....Title No.....

MORTGAGE (Outstanding or Foreclosed) — BOOK PAGE

Grantor .....
Consideration, $.....paid by.....Date inst....
Grantee .....Date ack....
Habendum to.....Date rec....
Covenants .....
Dower and .....
Signed by .....
Sealed by .....
Ack. by .....before.....

Marginal references

Description

Provided .....
Power of sale.....Where?.....
Notice .....
Newspaper published in .....
Grantee may purchase? .....
Special provisions .....

Sheet No.....Title No.....

MORTGAGE (Discharged) BOOK PAGE
Grantor .....
Consideration, $.....paid by.....Date inst....
Grantee .....Date ack....
Habendum to.....Date rec....
Covenants .....
Amount .....
Time .....
Wife .....

Marginal references

Description

Marginal Record.....
Sheet No.....Title No.....

Whatever system the examiner uses, he should be careful to adhere to that system carefully. It is not well to have the printed blank too full, as it is much easier to overlook important mistakes or omissions in a deed when the matter appears in the printed blank than if the examiner is obliged to write it into the blank himself. Many examiners dislike printed blanks altogether, as they claim there is a tendency to forget to note differences from the printed matter and to exercise care in comparing the printed blank with the deed in question, and therefore they prefer to abstract each deed by itself. On the other hand the advantages of printed blanks are, in the first place,

uniformity; in the second, saving of time and convenience in sorting the blanks when filled in. A sample of an abstract not made on a printed blank is as follows:

1602. 302 William Claflin Newton $1
to
Not locus Mary E. Clark ux Geo. L. Newton
gv gr bar sell cy A ctn pcl of ld with the bldgs thron sit in Newton bnd

Begng at the N. W. corner of the prems to be cyd on Otis St at the fence by ld of Eldredge being at N. W. corner of lot 33 on Blakes plan of ld of James M. Cook. d 1847. rec 3/44 th the line E on Otis St 431 f m or l. to the end of the pointed wall th S in a straight line to the fence by the wall bndg Mrs. Eldredge and my land th N. W. by sd stone wall and by the rear lines of lots 37 & 38 on sd plan to Mrs. Eldredge's land, th N 6 W by sd Eldredge land d, being W boundary line of lot 38 265 f to pt of begng.

Clark to pay taxes 1882
To h & h Mary E. Clark H & a
free full
D & H Mary B.
Date Apr. 1, 1882 William Claflin seal Mary B. Claflin seal
Ack June 9, 1882 bef Chas A. Drew N. P. seal
Rec. June 10, 1882

The date of the instrument is the date of record, but a good abstract will include the date of the instrument, the date of acknowledgment, and also the date of record. It is quite common to put the date of record at the top of the abstract of each instrument and a capital letter in the margin indicating the character of the instrument, as "M" for mortgage, "W" for warranty deed, "Q" for quitclaim deed, etc. The

abstract should begin, of course, with the full names of the grantors. It should include the consideration and indicate in some way by whom the consideration is paid. It should give the words of the granting clause fully by abbreviations, using a different abbreviation for the word "give" from that used for "grant," and it should also be noted whether the words "heirs and assigns" are used. The grantee's name will be placed commonly at the head of the instrument and therefore need not be repeated here under the granting clause. The description of the property must be carefully followed, and it may be well to begin each boundary on a new line, and in case of a complicated description, to make a small sketch on the page showing the description. The examiner should be careful to use some uniform system of punctuating the description. All distances may be written out in figures and the examiner will soon learn to use common abbreviations which will save much time. The expression "habendum in fee" may signify a complete and proper habendum clause in the deed, including heirs and assigns in the case of an individual grantee and successors or assigns in the case of a corporation. It is common to indicate the warranty in a deed by the expression "full wty," and any unusual warranty should be written out in full. The expression "being the same premises conveyed by deed of" can be abbreviated by using the equality sign, and a reference to title, as "for my title see deed of" will appear in the abstract as "ref. deed," etc. It is unnecessary usually to give the last name of the wife in the dower clause, which might well read as

follows: "ux Grace F. rel. d. & h." It must be noted whether all parties to the deed have actually signed it and whether all signatures are accompanied with seals, which may be indicated by the expression "all s. & s," and it is well to make a note of the names of the witnesses, if any. The examiner should note who acknowledges a deed and the name of the officer taking the acknowledgment. The examiner should see whether the deed is properly executed and acknowledged in accordance with the law in force at the time of its execution, as this may involve the question of Federal Revenue stamps under the Federal law of 1898.

All deeds must show that the owner was either unmarried at the time, or if not, proper release of homestead and of curtesy in the case of a husband and dower in the case of a wife, must appear on the deed. Where the deed does not show whether the owner was married or not, it may be necessary for the examiner to fortify the title by affidavits of persons who know the facts that the owner was unmarried at the time the deed was given. A mortgage is abstracted like a deed except that great care should be taken in noting the terms of the power of sale and other requisites to a good foreclosure stated in the mortgage. Any assignment, extension, or foreclosure of a mortgage will be carefully abstracted in the same way.

There are various methods of arranging the abstracts on completion of the work. Some conveyancers put them in chronological order regardless of the portion of the laws to which they refer, but probably a better way where the land comes from different

sources is to arrange the abstracts for each portion of the laws in chronological order.

STARTING POINT

Conveyancers all have their own methods of abstracting deeds and finding the starting point. Some, for example, will run a title back in the grantee indexes as far as necessary before making any abstract, but we believe it is on the whole easier to make abstracts of every deed that clearly relates to the title while searching for the starting point. In this way the examiner becomes familiar with the title as he goes along and is enabled to avoid, if his work is careful, looking at a deed more than once. The starting point of the title may well depend on the instructions given the examiner. He may be told that the title has previously been examined and found to be good down to a certain date, and that he is expected only to examine it from that date, in which case he will have no use for the grantees' indexes if he knows the owner on the date given, but will simply run the title down in the grantors' indexes. If he has no special instructions, the examiner will find it safe as a practical matter to run the title back about sixty years, unless some unexpected difficulty is developed, when he may have to search further. This, of course, will depend to some extent upon the importance of the transaction, as parties are frequently not willing to pay in a small transaction for a complete examination.

LIENS

In case of attachments it is not customary to examine the original process filed by the officer with the

Register, but it will be enough to consult the attachment index, which usually gives enough information. Attachments should be examined for a period of at least twenty years back from the date of the examination, running each owner, of course, during the period of his ownership, as cases sometimes lie for many years in the courts without action. Attachments are indexed under the name of the defendant in the suit brought. Where the attachment has been dissolved by bond, it will be enough for the examiner to find a note of such dissolution on the attachment index. The attachment may never have been discharged on the record in the Registry of Deeds but may have lapsed by operation of law, as where the plaintiff in the suit has been defeated or the suit was not entered in court within the proper time, or it has been dismissed or other disposition made of it, and the examiner will then be obliged to look at the original records and satisfy himself that the lien of the attachment is no longer outstanding.

Mechanics' liens must be carefully guarded against, as in some states it is not essential to their validity that the name of the true owner is correctly stated. It is practically impossible positively to guard against such liens through an examination of the record, but a little investigation of the history of the property and condition of the premises will show whether such a lien is likely to be outstanding.

In all probate cases special attention must be given to the inheritance tax laws, as such laws in practically all our states provide for a lien on real estate and the examiner must see that the tax was paid or that the

lien was released by the officer duly authorized. The Federal Legacy Tax of 1899 was not a lien on real estate, but certain internal revenue taxes, as those applying to brewers, distillers, and certain dealers in liquor and tobacco and certain others specially taxed like bankers, brokers, and proprietors of theatres, give a lien. To guard against these internal revenue liens when the property has been used for any one of the purposes taxed, the examiner should ascertain from the Federal officials whether the tax has been paid.

EXECUTION, TAX AND FORECLOSURE SALES

In case of a sale under execution the examiner should look at the original papers and satisfy himself that the court had jurisdiction of the parties and the subject matter of the proceeding and see that proper proceedings were taken to enable the court to enter judgment according to law. The proceedings on execution are strictly construed and the examiner should note that action was taken to enforce the execution within the time limited by law and that the proceedings of the officer as appear in the original papers and also in his deed were in accordance with the law enabling him to sell.

No instruments should be more minutely examined than tax deeds, as they are strictly construed. In Massachusetts, for example, there are over one hundred known reasons why a tax sale might be invalid and no titles under tax deeds can be registered until all the preliminaries of assessing the tax from the time the warrant for the raising of money from the proper city officer is received by the assessors down

through the assessment of the tax, the publication of notice of sale and the sale and the giving of the deed are complied with. Certificates of the proper officers must be obtained to show that every person who took any part in the proceedings was properly appointed or elected and duly authorized to do so.

The law so varies in the different states that no exact rule can be laid down, but it is enough to say that every step in the proceedings for assessing and collecting taxes must be verified before a tax deed can be safely passed as conferring title. One effect of the possibility of a tax sale is that all owners should be scheduled in the grantor index for the period after they have ceased to own the property within which the authorities have the right to sell the property for non-payment of taxes.

Another proceeding with which extreme care must be used is the foreclosure of a mortgage. Where the foreclosure was under power of sale in the mortgage, special attention must be paid not only to the statutory requirements at the time, but also to the provisions of the power in the particular mortgage, and proper evidence by affidavit or otherwise should appear in the records showing that due notice of the sale, including its time and place, was given. In case of foreclosure by equitable proceedings, it must appear that the court acquired jurisdiction of the parties and subject matter and acted in accordance with law.

BANKRUPTCY OR INSOLVENCY

The name of every owner in the chain of title should be examined in the Insolvency records of the

county where the owner appeared to live for the period when the National Bankruptcy Act has not been in force. It is, of course, not theoretically safe to stop here, as the owner may have gone into insolvency in another county in the state or even in another state, but practically speaking, it is all that is customary. The owners, during the period while the National Bankruptcy Act was in force, should also be examined in the Bankruptcy Court for the district where they appeared to live at the time, and that is practically all that the examiner does, although this is not absolutely safe for the same reason that the examination of the insolvency schedule is not theoretically sufficient.

The examination should include the names of mortgagees during the period to be sure that they have authority to discharge or release.

GOVERNMENTAL TAKINGS OR REGULATIONS

Road locations must usually be filed in the Registry of Deeds, and where this is not the law the examiner must go to the records of the proper officials and see whether any town ways, city streets, county ways or state highways have been laid out over any part of the locus. In states where a Board of Survey has a right to make street plans which restrict building on the property, their records must be carefully examined. The city or town authorities must be questioned as to the existence of any special assessments like street or sidewalk assessments, or sewer or water assessments, and in some states the statute provides that these officials shall issue certificates of the exist-

ence of such assessments. The examiner always runs the chance that an order for such improvement giving a lien may be passed by the local authorities after he has made his inquiry and before finally passing title, so this inquiry should be made as late as possible. At the same time, where there is any building on the premises, he should see that the building constitutes no violation of the existing local building laws. Under the laws in states where there is a Harbor and Land Commission or some similar board, the examiner should search in the offices of that board for any regulations or takings of the Board affecting the locus if it is wharf or shore property.

SUMMARY

When the examiner has run the title back in the grantee indexes to his starting point and has run it down in the grantor indexes and completed his schedules and made an abstract of the instruments which appear to affect the title, he will then find it convenient to make a summary of the title, giving a chronological list of all persons who have been interested in the property during the period of their actual ownership. With this information he should then make a careful search for all possible liens in the way of attachments or governmental charges against the property.

When the examiner has entirely completed his search, he should carefully study his material and note on every sheet in red ink such defects or other matters as require special attention. It is a good practice even during examination to make a cross or

other mark opposite such matters as are noticed at the time of collecting the material. He should compare the descriptions in the various deeds with each other and with the plans and see that the description by courses and distances makes a complete enclosed space. In case the property is part of a larger tract, he should note that portions of it have not been accidentally included in deeds of adjoining property. He should then make a summary showing the apparent record owner and indicating all possible defects down to the taxes for the current year. The date of the summary should be, of course, the date of the beginning of the abstract and not of its close, as instruments may have been recorded or orders affecting the land passed by local authorities in the meantime. A sample of such a summary is as follows:

Oct 18 1911 Title in Giacomo de Luco
Subj to mtg 3483.261 to H. Wilson Ross
$700 .....page 396
Subj to rts of drainage in deed 1731.363.page 393
Subj to restns in deed 2796.422.....page 395
No attach
No insolv x as noted
No tax sales.

REPORT TO CLIENTS

The examiner is personally responsible to his client for any errors or omissions or negligence in his work, it being a settled principle of law that one who holds himself out as being competent to examine a title should be equipped for the work. His report to his client should therefore be as guarded as possible. He

should avoid at all hazards making any warranty of the condition of the title, as we have seen how many things may affect it which do not appear of record. A good form is to say that he has examined the records in the Registry of Deeds and any other offices which he has searched through a certain period and has found there nothing to militate against the title except as stated. He should then state in short form the name of the present owner and give a list of all incumbrances, restrictions or other matters of interest affecting the value of the property and the state of the title outstanding.

PASSING PAPERS

It is not safe to pass papers anywhere except at the Registry, and immediately before the deeds are delivered the examiner should go to the office of the Register and run down his records for all late deeds which may not have been recorded or which may possibly have been recorded since his examination. He should also examine the records in the Bankruptcy Court immediately before passing papers and get a report from the city authorities as late as possible as to any possible lien from special assessments. When dower or curtesy must be released, it is better as a matter of safety to have the husband or wife actually present and sign at the time. The examiner will also be expected to see that the taxes are paid and that the insurance policies are properly transferred and proper allowances made. The grantor is expected to pay for the recording of all papers which clear his title, like discharges of any mortgages or other liens

against the property, while the grantee is expected to pay for the recording of the deed itself.

SOME OF THE DANGERS IN EXAMINATION OF TITLE

The careful and conscientious examiner, after he completes his examination, will bear in mind that the record often gives an incomplete list of the difficulties against the title. Deeds recorded may have been forged; may have been signed by infants or lunatics; the affidavits giving lists of heirs in probate proceedings may be erroneous, and frequently are; the court may never have acquired jurisdiction over the deceased person as he may have been domiciled in some other jurisdiction; a grantor may really be married and claim to be unmarried; or a good record title may be bad on account of disseisin or adverse possession, or an easement by prescription. There has been published, for example, a fanciful sketch of a title in the possession of an owner for thirty years under a specific devise in a will duly probated. The devisee, however, was an heir and was ousted by legatees under the will who had never been paid, and as he was an heir, he took by descent instead of by purchase. Further examination back some hundred years dispossessed the legatees on the ground that the estate of the deceased person was an estate tail which had recently terminated. It then appeared that the grantor of the deceased person had been really disseised and the Statute of Limitations had not run as the heirs of the disseisor since had been either infants or non compos or out of the jurisdiction, and so the property again changed ownership as the result of litigation.

Finally the original devisee got the property back on the ground that he was an heir of an owner some two hundred years before, who had given a deed with a condition that the property should revert if any building was built upon a certain portion of it, and a recent erection worked a forfeiture to the heirs of this early owner. As the erection was recent, the Statute of Limitations had not run and he fortunately recovered back his property. This simply illustrates some of the dangers attending a title to real estate. We can only close our sketch as we began it, by suggesting that the two main safeguards in the examination of titles are the care of the examiner and the general principle that as titles are examined at every transfer, there is a presumption of honesty and care in the work done by our predecessors, which presumption is, after all, our main reliance.

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